In the New York Supreme Court, General Term. Fifth District.

BROUNER *vs.* GOLDSMITH ET AL.

When the plaintiff in the course of a trial calls out the declarations of the defendant, it does not follow, that all that was said by defendant can be given in evidence, but only that which tended to qualify that given in evidence by the plaintiff, and no more.

Appeal by the plaintiffs from a judgment entered after a trial at the Circuit with a jury. It appeared in evidence that the plaintiff took a claim of the defendants against Adler & Garson, to collect and have one-third realized, and after the claim had been sued by the plaintiff, the defendants compromised the claim with Adler & Garson, and discharged them without plaintiff's consent. The defendants denied making any such contract with the plaintiff. On the trial the plaintiff tendered a witness to show that the defendants compromised with Adler & Garson, and the defendants called for all that was said upon that occasion, including what was said about the commission, and also what was said about the conditions upon which the plaintiff took the claim for collection. The plaintiff was not present. The Court received the evidence, and the plaintiff excepted, and the defendants had a verdict, and the plaintiff appealed.

G. N. Kennedy, for plaintiff.

N. F. Graves, for defendants.

The opinion of the Court was delivered by

ALLEN, J.—I am of opinion that the Justice erred in admitting evidence of the declarations of defendants at the time they settled the debt against Adler & Garson.

The plaintiff had not called for any declaration of the defendants on that occasion. They had proved a fact, to wit, the compromise and discharge of the debt, and it would probably have been competent for defendants to prove what was said concerning the settlement, and so much of the conversation as made a part of the negotiation as a part of the *res gesta*, and to show what was done; and had the plaintiff called for any part of the conversation, the

defendants could only have given so much of the residue of the conversation as tended to qualify that given in evidence by the plaintiff, and no more; that is, they could have given all upon the same subject. But there is no pretence that the plaintiff had directly or indirectly called for any declarations of the defendants concerning the agreement between them, and the conversation was admitted under the offer to show "what defendants may have said about plaintiff taking this claim."

The evidence was erroneously admitted, and we cannot say that it did not influence the result.

The judgment must be reversed and a new trial granted; costs to abide result.

RECENT ENGLISH DECISIONS.

In the Court of Queen's Bench, sitting in Banc after Hilary Term, 1861.[1]

LOUIS CASTRIQUE *vs.* SOLOMON LEVI BEHRENS AND OTHERS.

Declaration stated that the registered owner of a British ship mortgaged it, and on the 9th of April, 1855, the plaintiff became the mortgagee; that on the 8th June, 1854, the captain, while on a voyage, drew a bill at Melbourne, in Australia, on the owner in England, for necessary disbursements of the ship, in favor of L. & Co.; that L. & Co., without value, indorsed it to the defendants, British subjects residing in England; that the bill was dishonored; that the defendants, knowing the premises, and that the ship was about to call on her voyage at the port of Havre de Grace, in France, and that by the law of France the bonâ fide holder for value of such a bill (if a French subject) could take proceedings in the French courts and attach and sell the ship, conspired with T., a French subject, that they should indorse the bill to him without value, and that he should take proceedings in the French courts, and falsely represent that he was bonâ fide holder of the bill for value; and thereupon T., upon the arrival of the ship in a French port, took proceedings in the French courts, and therein obtained orders for the attachment and sale of the ship; and the plaintiff was deprived of his property in the ship: *Held*, that this being a judgment in rem, though in a foreign court, an action could not be maintained while it remained unreversed, as it was consistent with the averments in the declaration that the plaintiff had notice of the proceedings in France, and allowed judgment to go by default, or

[1] 7 Jurist N. S., 1028.